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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF TORTURE AND DETENTION

Written statement submitted by North South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

GE.00-10731 (E)

1. North South XXI would like to bring the case of arbitrary detention and denial of proper medical treatment of world-recognized human rights and indigenous peoples' rights defender Leonard Peltier to the attention of the Commission on Human Rights.

2. Mr. Peltier, a Lakota-Chippewa and lifelong defender of traditional, cultural, civil and human rights of Native peoples, is currently incarcerated at Leavenworth Federal Penitentiary in the United States for a crime he did not commit. He has become a notorious symbol of injustice towards indigenous peoples. His personal testimony of the case is recorded in Commission document E/CN.4/1997/NGO/80.

3. During the official celebration of the fiftieth anniversary of the Universal Declaration of Human Rights in Paris in December 1998, Leonard Peltier was recognized by the world community as a human rights defender. On this occasion several Nobel Peace Prize laureates, religious leaders and human rights NGOs called for the immediate release of Mr. Peltier. Rigoberta Menchú, UNESCO Goodwill Ambassador for a Culture of Peace, was one of those who made such calls.

4. Mr. Leonard Peltier has been arbitrarily held in United States federal prisons for 24 years. The initial investigation, the illegal extradition, the unfair trials, the appeals, the current parole process and the current Executive Clemency campaign have all shown that Mr. Peltier is not, and has never been in prison to pay restitution for a crime. Rather, he has been held in prison for vindictive and political reasons. All domestic remedies to bring justice to Mr. Peltier have been obstructed.

5. The United States admits to being directly responsible for Mr. Peltier's fraudulent extradition from Canada in 1976. They have admitted to preparing and submitting falsified affidavits to Canadian officials, with the participation of the Canadian prosecutor, according to FBI documents. This alone violates treaty protocol, extradition, and international law.

6. Mr. Peltier was then extradited to the United States where he was tried with the denial of due process guaranteed under the United States Constitution and international standards. Since 1986, the United States Government has consistently conceded that they cannot prove who is guilty of the crime he was convicted of, demonstrating once again that Mr. Peltier is being arbitrarily detained. The courts have utterly failed to bring him justice.

7. In November 1993 former United States Attorney-General Ramsey Clark filed a petition for Executive Clemency at the White House on behalf of Mr. Peltier. On average a review of such a petition is completed in six to nine months and rarely does it take longer than two years for one to receive a response. However, it has been almost seven years since Mr. Peltier's petition was filed and the President has not yet responded.

8. Additionally, Mr. Peltier has been held eight years in excess of the United States Parole Commission's own guidelines for release. The Parole Commission set his next parole hearing for the year 2008, 17 years in excess of the Parole Commission's release guidelines and six years after the date set by Congress for the total abolition of the Parole Commission itself. The reasons the Parole Commission has given for denying him parole have been arbitrary, capricious,

discriminatory, and in violation of his civil and human rights. Such practice can be considered a clear form of arbitrary detention in violation of the International Covenant on Civil and Political Rights.

9. Furthermore, Mr. Peltier's health continues to deteriorate as a result of the prison authorities' denial of proper medical treatment. If Mr. Peltier does not receive immediate medical treatment, his health condition will further deteriorate into a life-threatening situation. One can easily interpret the terrible health condition that Mr. Peltier has been forced to endure for many years as cruel and unusual punishment for a crime he did not commit. To allow him to remain in excruciating pain for the last four years can also be considered a form of torture.

10. Additionally, the Federal Bureau of Prisons recently stated that Mr. Peltier is suffering from "diabetes, a cardiac condition, and hyperlipedemia". He has suffered from a stroke in the past making these conditions very serious. Leonard Peltier has also lost 80 per cent of the vision in his left eye as a result of the prison authorities' failure to provide prompt and necessary medical treatment. Prison medical staff have recommended treatment for a prostate condition, yet treatment has not been administered.

11. By denying Mr. Peltier appropriate medical treatment, the United States prison authorities are violating the Universal Declaration of Human Rights (art. 5), the International Covenant on Civil and Political Rights (art. 7), the United Nations Standard Minimum Rules for the Treatment of Prisoners (part 1, rule 22 (2)), and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 1).

12. Torture and Cruel, Inhuman or Degrading Treatment or Punishment are outlawed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Every State is bound by the prohibition against torture as a matter of jus cogens. Nevertheless, torture of persons in detention persists, most often for persons arbitrarily detained for political reasons.

13. On 2 November 1998, the United Nations Special Rapporteur on torture sent an urgent appeal on behalf of Mr. Peltier and this case has been included and underlined in his 1999 report (E/CN.4/1999/61). The Special Rapporteur has stated that the case of Mr. Peltier continues currently to concern him.

14. Other than Mr. Peltier, thousands of prisoners in the United States do not receive adequate care for serious physical or mental health problems, according to several human rights NGOs' reports. Many of these practices violate United States laws as well as international human rights standards, but the mechanisms available to prevent abuses and provide redress are inadequate. International standards state that the place of detention shall be visited regularly by the competent authority as distinct from the authorities directly in charge of the administration of the place of detention or imprisonment. Unfortunately, the situation in the United States falls far short of this standard.

15. On 11 February 1999, the European Parliament adopted a new resolution on this case insisting that Mr. Peltier be granted presidential executive clemency, that he be transferred to a hospital where he may receive appropriate medical treatment, and reiterating their call for an investigation into the judicial improprieties involved in his conviction.

16. On 10 December 1998, President Clinton signed an executive order for the implementation of international human rights treaties signed by the United States and about their obligations pursuant to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Racial Discrimination.

Conclusion

17. In light of this executive order and considering the situation of Mr. Peltier, our organization North South XXI calls upon the Commission to appoint the Special Rapporteur on torture and the Working Group on Arbitrary Detention to carry out a visit to the United States to study the United States administration of justice based on racial discrimination and to investigate the case of Leonard Peltier, a recognized indigenous human rights defender, as well as the cases of other political prisoners and the condition of detention of the 1.8 million prisoners in the United States, especially at the Marion Control Unit, Leavenworth Federal Penitentiary, SCI Greene, Pelican Bay State Prison, Florence Institution, among others, and to make a report to the next Commission session.